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SENATE BILL 270

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO LICENSURE; CHANGING REQUIREMENTS AND STANDARDS FOR  
SOCIAL WORKERS; EXPANDING LICENSE CLASSIFICATIONS; PROVIDING  
FOR BOARD IMMUNITY AND CONFIDENTIALITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-31-3 NMSA 1978 (being Laws 1989,  
Chapter 51, Section 3) is amended to read:

"61-31-3. DEFINITIONS. --As used in the Social Work  
Practice Act:

A. "advisory committee" means an evaluation  
advisory committee;

B. "appropriate supervision" means supervision by  
an independent social worker or a master social worker with two  
years of supervised social work practice experience or other  
supervision ~~[which]~~ that is deemed by the board to be

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1 equivalent to supervision by a master social worker;

2 C. "baccalaureate social worker" means a person who  
3 uses the title of social worker and has a bachelor's degree in  
4 social work from a program accredited by the council on social  
5 work education or, under limited circumstances, a program  
6 equivalent to the council on social work education standards  
7 approved by the board;

8 D. "board" means the board of social work  
9 examiners;

10 E. "department" means the regulation and licensing  
11 department;

12 F. "executive agency" means any agency within the  
13 executive branch of government;

14 G. "independent social worker" means a person who  
15 uses the title of social worker and has a master's degree or a  
16 doctoral degree in social work from a graduate school of social  
17 work accredited by the council on social work education or,  
18 under limited circumstances, a program equivalent to the  
19 council on social work education standards approved by the  
20 board, and who has had two years of postgraduate social work  
21 practice under appropriate supervision;

22 H. "master social worker" means a person who uses  
23 the title of social worker and has a master's degree or a  
24 doctoral degree in social work from a graduate school of social  
25 work accredited by the council on social work education or,

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1 under limited circumstances, a program equivalent to the  
2 council on social work education standards approved by the  
3 board; and

4 I. "professional code of ethics" means a code of  
5 ethics and rules adopted by the board, designed to protect the  
6 public and to regulate the professional conduct of social  
7 workers. "

8 Section 2. Section 61-31-4 NMSA 1978 (being Laws 1989,  
9 Chapter 51, Section 4, as amended) is amended to read:

10 "61-31-4. LICENSE REQUIRED. --

11 A. Effective January 1, 1990, unless licensed to  
12 practice social work under the Social Work Practice Act, no  
13 person shall:

14 (1) [~~practice as an independent social worker~~]  
15 engage in the practice of social work as defined in the Social  
16 Work Practice Act; or

17 (2) use the title or represent himself as a  
18 licensed social worker or use any other title, abbreviation,  
19 letters, figures, signs or devices that indicate the person is  
20 licensed as a social worker.

21 B. Notwithstanding the provisions of Subsection A  
22 of this section, any individual who is employed in an executive  
23 agency on or after [~~the effective date of the Social Work~~  
24 ~~Practice Act~~] July 1, 1989 under the title of social worker or  
25 other title which is deemed to be social work practice by the

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1 board and who has a bachelor's degree or higher in a field  
2 other than social work shall not be required to be licensed  
3 until July 1, 1992; provided any employee of an executive  
4 agency who qualifies for licensure under the provisions of the  
5 Social Work Practice Act shall apply for licensure as provided  
6 in that act. "

7 Section 3. A new section of the Social Work Practice Act,  
8 Section 61-31-4.1 NMSA 1978, is enacted to read:

9 "61-31-4.1. [NEW MATERIAL] UNLAWFUL PRACTICE. --

10 A. Except as otherwise provided in the Social Work  
11 Practice Act, it is unlawful for any person to engage in the  
12 practice of:

13 (1) baccalaureate social work unless duly  
14 licensed as a baccalaureate social worker under the applicable  
15 provisions of the Social Work Practice Act;

16 (2) master's social work unless duly licensed  
17 as a master social worker under the applicable provisions of  
18 the Social Work Practice Act; and

19 (3) independent social work unless duly  
20 licensed as an independent social worker under the applicable  
21 provisions of the Social Work Practice Act.

22 B. A person shall not offer social work services or  
23 use the designation social worker, licensed baccalaureate  
24 social worker, licensed master's social worker, licensed  
25 independent social worker or the initials LBSW, LMSW, LISW or

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1 any other designation indicating licensure status or hold  
2 himself out as practicing social work as a baccalaureate social  
3 worker, master social worker or independent social worker  
4 unless duly licensed as such.

5 C. The provisions of social work services to a  
6 person in this state through telephonic, electronic or other  
7 means, regardless of the location of the social worker, is  
8 subject to regulation.

9 D. Any person engaging in the practice of social  
10 work without first complying with the provisions of the Social  
11 Work Practice Act is guilty of a misdemeanor and upon  
12 conviction shall be sentenced pursuant to the provisions of  
13 Section 31-19-1 NMSA 1978.

14 E. Students currently participating in a social  
15 work program approved by the board are exempt from licensure  
16 under the Social Work Practice Act when completing internship,  
17 externship or other social work experience requirements for  
18 such programs.

19 F. A person licensed to practice social work in  
20 another jurisdiction who is providing services within the scope  
21 of practice designated by such license in response to a  
22 disaster declared by the appropriate authority or governor of  
23 this state may upon prior written notice to the board provide  
24 such services in this jurisdiction for a period of time not to  
25 exceed sixty consecutive days per year without applying for a

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1 license. The practitioner who provides services under this  
2 subsection shall be deemed to have submitted to the  
3 jurisdiction of the applicable board and be bound by the laws  
4 of this state."

5 Section 4. Section 61-31-7 NMSA 1978 (being Laws 1989,  
6 Chapter 51, Section 7, as amended) is amended to read:

7 "61-31-7. BOARD CREATED. --

8 A. [~~There is created~~] The "board of social work  
9 examiners" is created.

10 B. The board shall be administratively attached to  
11 the department.

12 C. The board shall consist of seven members who are  
13 representative of the geographic and ethnic groups within New  
14 Mexico, who are United States citizens and who have been New  
15 Mexico residents for at least five years prior to their  
16 appointment. Of the seven members:

17 (1) four members shall have been engaged in  
18 social work practice for at least five years; at least two of  
19 the four shall hold a master's degree in social work; and at  
20 least two shall hold a bachelor's degree in social work from  
21 schools of social work that are accredited by the council on  
22 social work education or, under limited circumstances, a  
23 program equivalent to the council on social work education  
24 standards approved by the board. At least one of these members  
25 shall be engaged primarily in clinical social work practice;

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1 one member shall be engaged primarily in education; one member  
2 shall be engaged primarily in administration or research in  
3 social work practice; and at least one member shall be engaged  
4 primarily in community organization, planning and development.  
5 These members shall not hold office in any professional  
6 organization of social workers during their tenure on the  
7 board; and

8 (2) three members shall represent the public.  
9 The public members shall not have been licensed or have  
10 practiced as social workers. Public members shall not have any  
11 significant financial interest, whether direct or indirect, in  
12 social work practice.

13 D. Members of the board shall be appointed by the  
14 governor for staggered terms of three years, except that, in  
15 making the initial appointments, three members shall be  
16 appointed for terms ending June 30, 1990; three members for  
17 terms ending June 30, 1991; and four members for terms ending  
18 June 30, 1992. Each member shall hold office until ~~[his]~~ that  
19 member's successor is appointed and qualified. Vacancies shall  
20 be filled for the unexpired term in the same manner as original  
21 appointments.

22 E. Except for the representatives of the public on  
23 the board, the governor shall appoint board members from a list  
24 of nominees submitted by social work organizations and  
25 individual social work professionals.

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1 F. Members of the board shall be reimbursed as  
2 provided in the Per Diem and Mileage Act and shall receive no  
3 other compensation, perquisite or allowance.

4 G. The board shall elect a [~~chairman~~] chairperson  
5 and other officers as deemed necessary to administer its  
6 duties.

7 H. A simple majority of the board members currently  
8 serving shall constitute a quorum of the board.

9 I. The board shall meet at least once a year and at  
10 such other times as it deems necessary. Other meetings may be  
11 called by the [~~chairman~~] chairperson upon the written request  
12 of a quorum of the board.

13 J. The governor may remove any member from the  
14 board for the neglect of any duty required by law, for  
15 incompetence, for improper or unprofessional conduct as defined  
16 by board regulation or for any reason that would justify the  
17 suspension or revocation of [~~his~~] that member's license to  
18 practice social work.

19 K. [~~No~~] A board member shall not serve more than  
20 two consecutive terms, and any member failing to attend, after  
21 proper notice, three [~~executive~~] consecutive meetings shall  
22 automatically be removed as a board member, unless excused for  
23 reasons set forth in board regulations.

24 L. In the event of a vacancy for any reason, the  
25 board secretary shall immediately notify the governor and the

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1 board of the vacancy and the reason for its occurrence to  
2 expedite the appointment of a new board member within a  
3 six-month period. "

4 Section 5. Section 61-31-8 NMSA 1978 (being Laws 1989,  
5 Chapter 51, Section 8, as amended) is amended to read:

6 "61-31-8. BOARD'S AUTHORITY. --In addition to any  
7 authority provided by law, the board shall have the authority  
8 to:

9 A. adopt and file, in accordance with the State  
10 Rules Act, rules and regulations necessary to carry out the  
11 provisions of the Social Work Practice Act, in accordance with  
12 the provisions of the Uniform Licensing Act, including the  
13 procedures for an appeal of an examination failure;

14 B. select, prepare and administer, at least  
15 annually, written examinations for licensure [~~that shall~~  
16 ~~include a testing of the knowledge of New Mexico cultures~~];

17 C. adopt a professional code of ethics;

18 D. appoint advisory committees pursuant to Section  
19 61-31-19 NMSA 1978;

20 E. conduct hearings on an appeal of a denial of a  
21 license based on the applicant's failure to meet the minimum  
22 qualifications for licensure. The hearing shall be conducted  
23 pursuant to the Uniform Licensing Act;

24 F. require and establish criteria for continuing  
25 education;

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1 G. issue subpoenas, statements of charges,  
2 statements of intent to deny licenses and orders and delegate  
3 in writing to a designee the authority to issue subpoenas,  
4 statements of charges and statements of intent to deny licenses  
5 and establish procedures for receiving, investigating and  
6 conducting hearings on complaints;

7 H. approve appropriate supervision for those  
8 persons seeking licensure as independent social workers;

9 I. issue provisional licenses and licenses based on  
10 credentials to persons meeting the requirements set forth in  
11 the Social Work Practice Act;

12 J. determine qualifications for licensure,  
13 including the requirement to demonstrate an awareness and  
14 knowledge of New Mexico cultures;

15 K. set fees for licenses as authorized by the  
16 Social Work Practice Act and authorize all disbursements  
17 necessary to carry out the provisions of the Social Work  
18 Practice Act; and

19 L. keep a record of all proceedings and shall make  
20 an annual report to the governor. "

21 Section 6. A new section of the Social Work Practice Act,  
22 Section 61-31-8.1 NMSA 1978, is enacted to read:

23 "61-31-8.1. [NEW MATERIAL] ACTIONS OF BOARD--IMMUNITY--  
24 CERTAIN RECORDS NOT PUBLIC RECORDS. --

25 A. A member of the board or a person working on

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1 behalf of the board shall not be civilly liable or subject to  
2 civil damages for any good faith action undertaken or performed  
3 within the proper functions of the board.

4 B. All written and oral communications made by a  
5 person to the board relating to actual or potential  
6 disciplinary action shall be confidential communications and  
7 are not public records for the purposes of the Public Records  
8 Act. All data, communications and information acquired by the  
9 board relating to actual or potential disciplinary action shall  
10 not be disclosed except:

11 (1) to the extent necessary to carry out the  
12 board's functions;

13 (2) as needed for judicial review of the  
14 board's actions; or

15 (3) pursuant to a court order issued by a  
16 court of competent jurisdiction.

17 C. Notwithstanding the provisions of Subsection B  
18 of this section, at the conclusion of an actual disciplinary  
19 action by the board, all data, communications and information  
20 acquired by the board relating to an actual disciplinary action  
21 taken against a person subject to the provisions of the Social  
22 Work Practice Act shall be public records, pursuant to the  
23 provisions of the Public Records Act. "

24 Section 7. Section 61-31-9 NMSA 1978 (being Laws 1989,  
25 Chapter 51, Section 9) is amended to read:

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1 "61-31-9. REQUIREMENTS FOR LICENSURE. --

2 A. The board shall issue a license as a  
3 baccalaureate social worker to any person who files a completed  
4 application, accompanied by the required fees, and who submits  
5 satisfactory evidence that the applicant:

6 (1) has reached the age of majority;

7 (2) has at least a bachelor's degree in social  
8 work from a program accredited by the council on social work  
9 education or, under limited circumstances, a program equivalent  
10 to the council on social work education standards approved by  
11 the board; and

12 (3) demonstrates professional competence by  
13 satisfactorily passing a written examination as prescribed by  
14 the board.

15 B. The board shall issue a license as a master  
16 social worker to any person who files a completed application,  
17 accompanied by the required fees, and who submits satisfactory  
18 evidence that the applicant:

19 (1) has reached the age of majority;

20 (2) has obtained a master's degree or a  
21 doctoral degree in social work from a graduate school of social  
22 work accredited by the council on social work education or,  
23 under limited circumstances, a program equivalent to the  
24 council on social work education standards approved by the  
25 board; and

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1 (3) demonstrates professional competence by  
2 satisfactorily passing a written examination as prescribed by  
3 the board.

4 C. The board shall issue a license as an  
5 independent social worker to any person who files a completed  
6 application, accompanied by the required fees, and who submits  
7 satisfactory evidence that the applicant:

8 (1) has reached the age of majority;

9 (2) has obtained a master's degree in social  
10 work from a graduate school of social work accredited by the  
11 council on social work education or, under limited  
12 circumstances, a program equivalent to the council on social  
13 work education standards approved by the board;

14 (3) has two years of postgraduate social work  
15 practice as a licensed master social worker or its equivalent  
16 under appropriate supervision; and

17 (4) demonstrates professional competence by  
18 satisfactorily passing a written examination as prescribed by  
19 the board.

20 D. Notwithstanding the provisions of this section,  
21 the board may grant a license on a case-by-case basis to those  
22 employees of an executive agency who are currently practicing  
23 social work as defined in Section [~~6 of the Social Work~~  
24 ~~Practice Act~~] 61-31-6 NMSA 1978 and have been so employed for  
25 at least ten years prior to the effective date of [~~that~~] the

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1 Social Work Practice Act. "

2 Section 8. Section 61-31-13 NMSA 1978 (being Laws 1989,  
3 Chapter 51, Section 13) is amended to read:

4 "61-31-13. LICENSURE BY CREDENTIALS. --The board may  
5 license an applicant without written examination, provided  
6 [~~that he~~] the applicant possesses a valid social worker license  
7 issued by the appropriate examining board under the laws of any  
8 other state or territory of the United States, the District of  
9 Columbia or any foreign nation [~~which~~] that, in the judgment of  
10 the board, has requirements [~~including knowledge of New Mexico~~  
11 ~~cultures, substantially equivalent to or exceeding those in the~~  
12 ~~Social Work Practice Act~~] equivalent to or exceeding those in  
13 the Social Work Practice Act. Applicants applying for  
14 licensure by credentials shall also demonstrate by means  
15 established by the board that they have awareness and knowledge  
16 of New Mexico cultures for the licensure level sought. "

17 Section 9. Section 61-31-14 NMSA 1978 (being Laws 1989,  
18 Chapter 51, Section 14, as amended) is amended to read:

19 "61-31-14. LICENSE RENEWAL. --

20 A. Each licensee shall renew his license annually  
21 by submitting a renewal application on a form provided by the  
22 board. At the time of license renewal, the board shall require  
23 a licensee to produce evidence of continuing education, as  
24 prescribed by the board.

25 B. A thirty-day grace period shall be allowed each

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1 licensee after each annual licensing period, during which time  
2 licenses may be renewed upon payment of the renewal fee and  
3 providing evidence of continuing education as [~~required under~~  
4 ~~the Social Work Practice Act~~] prescribed by the board.

5 C. Any licensee who allows his license to lapse for  
6 longer than three months shall have the license automatically  
7 revoked and shall be required to take a written examination.

8 D. A late penalty fee shall be assessed after the  
9 thirty-day grace period has expired for anyone attempting to  
10 renew a license to practice social work.

11 E. Any person licensed under the Social Work  
12 Practice Act who wishes to assume inactive status in the  
13 practice of social work shall notify the board's administrator  
14 in writing prior to the July 1 expiration of that person's  
15 current license. As part of the written request for inactive  
16 status, the licensee shall show proof of having completed the  
17 required continuing education hours. If the licensee has not  
18 met the continuing education requirements, inactive status may  
19 be granted, but the licensee shall be subject to all rules  
20 related to continuing education if reinstatement of license is  
21 requested. The practice of social work in New Mexico under an  
22 inactive license is strictly prohibited. Any person licensed  
23 under the Social Work Practice Act who has assumed inactive  
24 status may notify the board, in writing, of that person's  
25 desire to resume active practice. The applicant seeking

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1 reinstatement of an inactive license shall, in addition to  
2 other requirements established by the board, provide  
3 satisfactory proof of completion of no less than ten hours of  
4 continuing education for each year of inactive status.

5 F. The board shall not accept applications for  
6 inactive status from licensees who are under investigation for  
7 violations of the Social Work Practice Act or who have an  
8 inactive complaint pending with the board.

9 G. The board shall accept applications from a  
10 social worker who is impaired as defined in the Social Work  
11 Practice Act and who is participating in a rehabilitation plan  
12 approved by the board. The board may, at its discretion,  
13 require that an applicant for reinstatement take and pass a  
14 written or oral examination as prescribed by the board."

15 Section 10. A new section of the Social Work Practice  
16 Act, Section 61-31-14.1 NMSA 1978, is enacted to read:

17 "61-31-14.1. [NEW MATERIAL] RETIREMENT STATUS. --

18 A. Any person licensed under the Social Work  
19 Practice Act who wishes to retire from practice shall notify  
20 the board's administrator in writing prior to the July 1  
21 expiration of the person's current license. As part of the  
22 written request for retirement status, the licensee shall show  
23 proof of having completed the required continuing education  
24 hours. If the licensee has not met the continuing education  
25 requirements, retirement status may be granted but the licensee

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1 shall be subject to all rules related to continuing education  
2 if reinstatement of license is requested.

3 B. Upon approval by the board of the request for  
4 retirement status, the licensee shall assume retirement status  
5 and be exempt from payment of the yearly renewal fees during  
6 the period of retirement.

7 C. The practice of social work in New Mexico under  
8 a retired license is strictly prohibited. Any person licensed  
9 under the Social Work Practice Act who has retired may notify  
10 the board in writing of that person's desire to resume active  
11 practice.

12 D. The person seeking reinstatement of a retired  
13 license shall in addition to other requirements established by  
14 the board, provide satisfactory proof of:

15 (1) completion of no less than five hours of  
16 continuing education for each year of retirement; such  
17 continuing education to be accumulated in accordance with the  
18 rules of the board; and

19 (2) completion of all continuing education  
20 requirements determined to have been unmet at the time  
21 retirement status was granted.

22 E. The board may at its discretion require that an  
23 applicant for reinstatement take and pass a written or oral  
24 examination as prescribed by the board.

25 F. A retired person licensed under the Social Work

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1 Practice Act shall not reactivate his practice until receipt of  
2 the new license.

3 G. The board shall not accept applications for  
4 retirement from licensees who are under investigation for  
5 violations of the Social Work Practice Act or who have an  
6 active complaint pending with the board.

7 H. The board shall accept applications under this  
8 section from any social worker who is impaired as defined in  
9 the Social Work Practice Act and is participating in a  
10 rehabilitation plan approved by the board. "

11 Section 11. Section 61-31-15 NMSA 1978 (being Laws 1989,  
12 Chapter 51, Section 15) is amended to read:

13 "61-31-15. [~~LICENSE~~] FEES. -- Applicants for licensure and  
14 other persons shall pay fees set by the board, not to exceed:

15 A. for written examination for any level of  
16 licensure other than initial licensure, two hundred dollars  
17 (\$200);

18 B. for initial licensure following a written  
19 examination as a baccalaureate social worker, two hundred  
20 dollars (\$200);

21 C. for initial licensure following a written  
22 examination as a master social worker, three hundred dollars  
23 (\$300);

24 D. for initial licensure following a written  
25 examination as an independent social worker, three hundred

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1 dollars (\$300);

2 E. for licensure by credentials at any level, three  
3 hundred dollars (\$300);

4 F. for licensure without written examination,  
5 including a provisional license, as a baccalaureate social  
6 worker, one hundred fifty dollars (\$150);

7 G. for licensure without written examination,  
8 including a provisional license, as a master social worker, two  
9 hundred fifty dollars (\$250);

10 H. for licensure without written examination,  
11 including a provisional license, as an independent social  
12 worker, three hundred dollars (\$300);

13 I. for renewal of a license as a baccalaureate  
14 social worker, one hundred dollars (\$100);

15 J. for renewal of a license as a master social  
16 worker, two hundred dollars (\$200);

17 K. for renewal of a license as an independent  
18 social worker, three hundred dollars (\$300);

19 L. for a late fee for failure to renew within the  
20 allotted grace period, one hundred dollars (\$100); [and]

21 M. for a duplicate license, twenty-five dollars  
22 (\$25.00); and

23 N. for reasonable administrative fees, three  
24 hundred dollars (\$300). "

25 Section 12. Section 61-31-16 NMSA 1978 (being Laws 1989,  
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1 Chapter 51, Section 16) is amended to read:

2 "61-31-16. FUND ESTABLISHED. --

3 A. ~~[There is created in the state treasury]~~ The  
4 "board of social work examiners fund" is created in the state  
5 treasury.

6 B. All money received by the board under the Social  
7 Work Practice Act shall be deposited with the state treasurer  
8 for credit to the fund. The state treasurer shall invest the  
9 fund as other state funds are invested, and all income derived  
10 from investment of the fund shall be credited to the fund.

11 Money in the fund is subject to appropriation by the  
12 legislature. All balances in the fund shall remain in the fund  
13 and shall not revert to the general fund.

14 C. Money in the fund is appropriated to the board  
15 and shall be used only for the purpose of meeting the necessary  
16 expenses incurred in carrying out the provisions of the Social  
17 Work Practice Act. "